

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. NG-0035/  
on its own motion, seeking to         ) PI-115  
investigate the interactions            )  
among aggregators, suppliers and     ) ORDER OPENING DOCKET  
jurisdictional utilities                )  
operating a customer choice            )  
program.                                 ) May 2, 2006

BY THE COMMISSION:

O P I N I O N     A N D     F I N D I N G S

The State Natural Gas Regulation Act (Act)<sup>1</sup> enacted by the Nebraska Legislature in 2003 and rules and regulations promulgated by the Nebraska Public Service Commission (Commission) allow natural gas aggregators to apply for certificated authority to conduct business in the State of Nebraska if the eligibility criteria established by the Commission are satisfied.<sup>2</sup>

The pertinent statute states in part, "The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. The commission shall adopt and promulgate rules and regulations to establish specific criteria for certification."<sup>3</sup> The Commission promulgated rules and regulations that specify the requirements for an applicant to receive authority as an aggregator in Nebraska.<sup>4</sup>

On February 28, 2006, the Commission issued an order granting a certificate of authority to RnD Energy, LLC (RnD) to operate as a natural gas aggregator in Nebraska.<sup>5</sup> RnD intended to create an aggregation pool in the Kinder Morgan Choice Program during the most recent selection period, which concluded May 1, 2006. The Commission has become aware that efforts by RnD to create a pool of clients and negotiate a price for their clients with suppliers in the Kinder Morgan system were unsuccessful. According to consumer complaints received by Commissioners and staff, and a representative of RnD, the pool of customers was disbanded due to issues related to negotiations.

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<sup>1</sup> See Neb. Rev. Stat. § 66-1801 et seq.

<sup>2</sup> Neb. Rev. Stat. § 66-1849.

<sup>3</sup> See Neb. Rev. Stat. § 66-1949.

<sup>4</sup> See 291 Neb. Admin. Code, Ch. 9, Rule 009.

<sup>5</sup> *In the Matter of RnD Energy, LLC, Boulder, Colorado seeking authority as a Competitive Natural Gas Provider in Nebraska*, Application No. NG-0033, (February 28, 2006).

Sections 66-1848 and 66-1849 address certification of competitive natural gas providers and aggregators, but do not specify how either will interact with a jurisdictional utility or one another.<sup>6</sup> For a jurisdictional utility offering a customer choice program, the relationship between a supplier, which is a competitive natural gas provider, and the jurisdictional utility is governed by the utility's tariff. Kinder Morgan's tariff is silent on treatment of aggregators.

On March 31, 2006, the Commission received a letter from Kinder Morgan indicating some concerns with RnD's marketing and business practices. The letter further discussed the possibility of Kinder Morgan filing a revised Nebraska Gas Tariff requiring natural gas aggregators to comply with applicable sections of the Supplier Code of Conduct set forth in Section 38.2 of the Kinder Morgan's General Terms and Conditions of Tariff. The Commission anticipates that the issues explored in this docket will lead to development of appropriate tariff language to be used by Kinder Morgan.

The Commission has not addressed the issue of relationships among aggregators, suppliers and jurisdictional utilities operating a customer choice program, and RnD is the first natural gas aggregator to apply to the Commission for authority since the passage of the Act in 2003. Therefore, the Commission finds that it should open a public investigation to explore the following issues:

- a. Whether the Commission should promulgate rules and regulations to address the relationship between aggregators and suppliers in a customer choice program? If so, what issues should be addressed?
- b. Whether a natural gas supplier can refuse to negotiate with a duly certificated and recognized aggregator on the grounds of fitness to perform the service of an aggregator.
- c. Whether failure to honor a customer's choice to use an aggregator's services in a choice gas program constitutes a violation of the non-discrimination clause of the Code of Conduct contained in Kinder Morgan, Inc.'s September 8, 2004 Nebraska Gas Tariff Section 38.2E.

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<sup>6</sup> See Neb. Rev. Stat. §§ 66-1848 to 66-1849 (2003 Supp.).

- d. Whether aggregated pools of customers should be offered bids when not represented by a certificated aggregator.

Interested parties may file comments in this matter on or before **5:00 p.m., June 2, 2006**. All parties submitting comments should provide one original, five paper copies and one electronic copy in MS Word format on a disk/CD or sent via email to [nichole.underhill@psc.ne.gov](mailto:nichole.underhill@psc.ne.gov) and [rose.price@psc.ne.gov](mailto:rose.price@psc.ne.gov).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a public investigation is hereby opened as captioned above.

IT IS FURTHER ORDERED interested parties may file comments in this matter on or before **5:00 p.m., June 2, 2006**. All parties submitting comments should provide one original, five paper copies and one electronic copy in MS Word format on a disk/CD or sent via email to [nichole.underhill@psc.ne.gov](mailto:nichole.underhill@psc.ne.gov) and [rose.price@psc.ne.gov](mailto:rose.price@psc.ne.gov).

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of May, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director